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Recommended By: Councilor Johnathan Austin
Chairman, Public Safety Committee

Submitted by: Thomas Bentley, III
Acting City Attorney

ORDINANCE NO._____

AN ORDINANCE AMENDING TITLE 12, CHAPTER 14 OF THE GENERAL CITY CODE, 1980 TO ADD A NEW CHAPTER TO ESTABLISH REGULATIONS FOR MOBILE FOOD VEHICLES AND PUSHCARTS IN THE CITY OF BIRMINGHAM, ALABAMA.

Whereas, Alabama municipalities are authorized to regulate the use of public streets, sidewalks and rights-of-way for public health, safety, welfare and convenience; and

Whereas, no person, firm, association, or corporation is authorized or permitted to use the streets, avenues, alleys, or public rights-of-way of any municipality for the operation of any private enterprise, without first obtaining the consent of the proper authorities of such municipality (Ala. Const. Art. XII, § 220; Ala. Code, 1975, § 11-49-1 (a)); and

Whereas, mobile food vehicles and pushcart vendors are using public parking spaces, loading zones and other parts of public rights-of-way without the approval of the City Council; and

Whereas, mobile food vehicles, pushcarts or “food vehicles or food trucks”, are a national trend and provide the useful service of convenient and varied dining options in business areas and in areas that lack businesses providing nutritional dietary options; and

Whereas, the Council of the City of Birmingham finds it in the interest of the public health, safety, welfare and convenience to authorize the operation of mobile food vehicles and pushcart vendors within the City of Birmingham, subject to regulations to protect the safe and convenient use of public rights-of-way.

SECTION 1 NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Birmingham, Alabama, that Title 12, “Licensing and Regulation” Chapter 14 “Peddlers and Solicitors, is hereby amended to add a new article as follows:

1 Purpose

The general purpose of this ordinance is to promote the health, safety, comfort, convenience, prosperity, and general welfare of the citizens of Birmingham by establishing reasonable guidelines and regulations for mobile food vehicles and pushcarts to encourage the safe and convenient use of the city's public rights-of-way.

2 Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Applicant" means any person or business that applies for a permit or renews a permit under the provisions of this Article.

"Birmingham City Council", "Council", "City Council". The words "Council" or "City Council" shall mean the Council of the City of Birmingham.

"BPD" means the Birmingham Police Department.

"Business licenses" are the licenses required of any business to operate within the City pursuant to the City license code.

"City Center" includes the territory and boundaries as generally described in the amended Urban Renewal and Urban Redevelopment Plan for Downtown Birmingham as established by the Birmingham City Council in Resolution No. 2166-9 also known as the "Master Plan".

"Commissary" means a permitted food establishment to which a mobile food establishment, pushcart or transportation vehicle returns daily for such things as discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food.

"Food zone" is an area approved by the Birmingham City Council for the specific operation of mobile food vehicles and/or pushcarts within the public rights-of-way.

"General Area" means any location within the public rights-of-way of the City of Birmingham not within the Premier Area.

"Health Department" shall mean a county health department. Such terms shall be construed to include the Jefferson County Health Department and any officer or agent of the department authorized to act for and on behalf of the department with respect to the enforcement and administration of this code and other city ordinances.

“Hours of Operation” are the designated time frame mobile food vehicles are authorized to operate within the city rights-of-way.

“Mobile food vehicle” means, except for pushcarts but including ice cream trucks and lunch wagons, a unit mounted on or pulled by a self-propelled vehicle where food including prepackaged foods, for individual portion service is prepared, or dispensed; is self-contained with its own drinking water tank and waste water tank; is designed to be readily movable; and is moved daily to return to its commissary.

“Operator” is the entity that is legally responsible for the operation of the mobile food vehicle such as the permittee, the permittee’s agent, or other person; and possesses a valid permit to operate a mobile food vehicle.

“Pedestrian” is a person who is walking or otherwise traveling in the public rights-of-way.

“PEP” means the Department of Planning, Engineering and Permits.

"Permit" means a written authorization to operate a mobile food vehicle or pushcart within the public rights-of-way of the City of Birmingham.

“Permittee” a person who has been granted a permit by the Birmingham City Council to operate one or more mobile food vehicles upon the streets of the city.

“Person” means any natural person, firm, partnership, association, or corporation. Whenever the word “person” is used in any section in this Article prescribing a penalty or fine as applied to a partnership or association, the word shall include the partners or members thereof; such word as applied to corporations shall include the officers, agents, or employees thereof who are responsible for any violation of such section.

“Premier Area” includes that section of the City Center beginning at the corner of 8th Avenue North and 18th Street North; proceeding southerly on 18th Street North, converting to 18th Street South to the corner of 10th Avenue South; then easterly on 10th Avenue South to the corner of 22nd Street South; then Northerly on 22nd Street South, converting to 22nd Street North to the corner of 8th Avenue North; then westerly on 8th Avenue North to the point of beginning.

“Pushcart” means a non-self propelled mobile food unit that is lightweight enough, designed, and intended to be moved by one person. A pushcart shall be used to prepare and serve only:

- i. potentially non hazardous foods such as popcorn, lemonade, hot dogs or flavored ice;
- or
- ii. foods pre-wrapped at the commissary and maintained at the required temperatures per the County Health Department regulations.

“Restaurant” a brick and mortar establishment where meals are generally served and eaten on premises or prepares and serves food and/or drink to customers for consumption on the premises in return for money, either paid before the meal, after the meal, or with a running tab. A restaurant does not include a food service that is delivery only.

“Rotation Cycle” A rotation cycle requires a mobile food vehicle to rotate in sequential order to different food zones within the Premier Area of the City Center. Participants shall begin with the last position created and is measured based on the time it takes to revolve to first food zone created. Applicants operating within the Premier Area shall rotate one food zone in numeric order each day.

*Example:

MONDAY

Zone	Location	Vendor
1	Corner of 8 th Avenue North and 18 th Street North	Chicken Mobile Food Vehicle
2	Corner of 7 th Avenue South and 20 th Street South	Taco Mobile Food Vehicle
3	Corner of 4 th Avenue South and 16 th Street South	Burger Mobile Food Vehicle
4	Corner of 9 th Avenue South and 21 st Street South	Fish Mobile Food Vehicle

TUESDAY

Zone	Location	Vendor
1	Corner of 8 th Avenue North and 18 th Street North	Taco Mobile Food Vehicle
2	Corner of 7 th Avenue South and 20 th Street South	Burger Mobile Food Vehicle
3	Corner of 4 th Avenue South and 16 th Street South	Fish Mobile Food Vehicle
4	Corner of 9 th Avenue South and 21 st Street South	Chicken Mobile Food Vehicle

**Locations above are shown for demonstrative purposes only.*

“Vending” is the business of selling or causing to be sold any of the following items: food products, produce, prepared foods and beverages, prepackaged foods and non-alcoholic beverages from a mobile food vehicle and/or pushcart.

3 Mobile Food Vendors Committee

- 1) There shall be established by this ordinance a Mobile Food Vendors Committee consisting of representatives from each of the following: Traffic Engineering Department, Planning Engineering and Permits Department, Police Department, Mayor’s Office of Economic Development, REV, Inc. and a member of the Greater Birmingham Street Food Coalition. The Mobile Food Vendors Committee shall review and recommend all applications based on the guidelines established by this ordinance. The Mobile Food Vendors Committee shall meet as required. A special meeting may be called by any of the committee members.

4 Permit Required for Food Zone Operation

- 1) All mobile food vehicles and pushcarts must obtain a permit to operate within the City’s rights-of-way. Mobile food vehicles that are granted a permit to operate within the Premier Area of the City Center shall be subject to a rotation cycle, as defined by this ordinance. Pushcarts are not subject to a rotation cycle.
- 2) Any mobile food vehicle and/or pushcart that shall operate solely on private property shall not be required to apply for a permit. They shall, however, be required to obtain a business license and decal from the Revenue Department.

5 Approval Process

- 1) Any person or company desiring a permit to operate a mobile food vehicle or pushcart within the public rights-of-way of the Birmingham city limits must first submit an online application to the Traffic Engineering Department along with a \$150.00 (One Hundred Fifty Dollar) application fee for Mobile Food Vehicles or \$40.00 (Forty Dollar) application fee for Pushcarts. Application fees are non-refundable. Each application shall be date and time stamped to be processed in the order it is received. All applications shall then be submitted to and reviewed by the Mobile Food Vendors Committee. The application fee shall be applied to the cost of an approved permit.
- 2) The Mobile Food Vendors Committee shall review each application for the suitability of the proposed location(s) for which the permit is sought. The Mobile Food Vendors Committee shall then submit a recommendation to the Public Safety Committee within

twenty eight (28) days from the date of the application for review and recommendation to the City Council.

- 3) The Public Safety Committee shall set a date and time for its review of the application and shall afford the applicant and interested parties reasonable and timely notice thereof. The applicant and such interested parties, in the course of the committee's review, shall be given the opportunity to offer testimony and evidence in support of their respective positions and may have counsel present to so represent them. At the conclusion of the Public Safety Committee review, the Public Safety Committee shall vote to recommend its approval or disapproval of the application to the City Council. The Public Safety Committee shall thereupon advise the applicant and other interested parties appearing before it of the committee's decision and shall further inform the applicant and such interested parties of the date of the council meeting at which the application will be on the Council agenda.

6 Creation of Food Zone

- 1) Food zones are created at the request of the applicant. A food zone must be approved and established by the City Council in order for the applicant to operate within the City of Birmingham's rights-of-way.
- 3) Applicants may request up to three (3) food zones per application, listed in order of preference. Only one food zone shall be approved per application. The application will proceed with the first location approved by the Mobile Food Vendors Committee. If none of the requested locations are approved, a new application shall be required.
- 4) Food zones within the Premier Area of the City Center shall be numbered in the order it was approved by the City Council.
- 5) Once a new food zone is approved and established, the applicant shall be allowed to 1) operate at a fixed location within the general rights-of-way; or 2) enter the rotation cycle within the Premier Area of the City Center, beginning with the location for which they were newly approved. Applicants shall be granted one food zone per truck within the Premier Area.
- 6) Each permit issued under this ordinance shall be displayed at all times on the rear of the mobile food vehicle and conspicuously on the pushcart.
- 7) If an existing mobile food zone is no longer in compliance with the requirements set forth in this ordinance due to changing conditions, the Mobile Food Vendors Committee shall make a recommendation to the Public Safety Committee on the feasibility to issue a new permit when the existing permit expires.

- 8) The Birmingham City Council reserves the right to limit the number of designated food zones within the City Center, to address the health, safety, comfort, convenience, prosperity and general welfare of the citizens of Birmingham.

7 Application for Permit

- 1) Permit applications shall be processed in the order received. Each online application submitted shall be date and time stamped. Each application shall require the following:
- a) Payment of application fee. Such fee shall apply to cost of the permit for approved applications. The balance of the permit fee shall be due after Council approval.
 - b) A valid copy of all required licenses/permits of a Health Department, as applicable, for each mobile food vehicle and/or pushcart.
 - c) The applicant's full name, signature, address and whether the applicant is an individual, firm, or corporation, and, if a partnership, the names of the partners, together with their addresses.
 - d) The address of its commissary.
 - e) A photograph of the applicant, e.g. driver's license, passport or similar.
 - f) Each applicant must attest that they are in compliance with the Hammon-Beason Alabama Taxpayer and Citizen Protection Act

2) Applicants applying to vend on private property must supply the following:

- a) A valid copy of executed Lease(s) or Letter(s) of consent from property owner(s) or proof of ownership of the property for each private site.
- b) Written approval from the City's Zoning Division of P.E.P. for each private site.
- c) A Site Plan including: photos of site and a detailed layout noting truck orientation and service plan is required for each private site.

2)3) Applicants may request three up to (3) food zones per application, listed in order of preference. The application will proceed with the first location approved by the Mobile Food Vendors Committee. If none of the requested locations are approved, a new application shall be required. Only one food zone shall be approved per application.

3)4) An accurate description of the mobile food vehicle and/or pushcart, including the following data for mobile food vehicles: The make, model and type of body; the number

of cylinders; the vehicle identification number or any other identifying number as may be required by the Mobile Food Vendors Committee.

4)5) The operator shall provide the manufacturer's specs on decibels range generated by his particular generator. The decibel levels for any generator(s) used shall not exceed "80dBA".

5)6) A statement that the applicant has not been convicted of any crime that involves any local, state or federal law or regulation during the operation of a similar business.

6)7) A statement that the applicant has not been convicted of a crime as a result of having perpetrated deceptive practices upon the public within the last ten years.

7)8) Applicant shall notify the Traffic Engineering Department within fifteen (15) days after any changes to application information.

8)9) A signed statement that the applicant shall hold harmless the City and its officers and employees, and shall indemnify the City, its officers and employees for any claims for damage to property or injury to persons which may be occasioned by any activity carried on under the terms of the permit.

9)10) Permittee shall furnish and maintain such public liability, food products liability, and property damage insurance as will protect vendor, property owners, and the City from all claims for damage to property or bodily injury, including death, which may arise from the operations under the permit or in connection therewith. Such insurance shall provide coverage of not less than One Hundred Thousand Dollars (\$100,000.00) per person and Three Hundred Thousand Dollars (\$300,000.00) per accident or occurrence. The policy shall further provide that it shall not be cancelled except upon thirty (30) days written notice served upon the City of Birmingham, Office of the City Clerk – 3rd Floor, 710 North 20th Street, Birmingham, AL 35203. A permit issued pursuant to the provisions of this section shall be invalid at any time the insurance required herein is not maintained and evidence of continuing coverage is not filed with the City Clerk. Proof of insurance must be shown on each mobile food vehicle and pushcart in operation.

8 Fees.

1) Upon approval of an application for a General Area permit of the City's rights-of-way, the annual fee shall be \$300.00 for a mobile food vehicles and \$80.00 for pushcarts.

2) Upon approval of an application to operate within both the Premier Area of the City Center and the General Area of the rights-of way the annual permit fee shall be \$500.00 for a mobile food vehicles and \$100.00 for pushcarts.

- 3) There shall be a onetime initial cost of \$250.00 to establish new food zones for mobile food vehicles and \$60.00 for pushcarts. Said cost is to cover any administrative services and alterations needed in preparing the food zones. Some examples include, but are not limited to the removal of parking meters, the pouring of concrete, and the cost of the signage. This onetime fee is separate of any permit fee.
- 4) The annual permit fees set forth in this section shall bill on a calendar year from January 1 to December 31. The fees shall be prorated bi-annually as follows:

From	- To	Food Truck General Area	Food Truck Premier Area	Pushcart General Area	Pushcart Premier Area
January 1 st	- June 30 th	\$300.00	\$500.00	\$80.00	\$100.00
July 1 st	- December 31 st	\$150.00	\$250.00	\$40.00	\$50.00

The \$150.00 application fee for mobile food vehicles and the \$40.00 application fee for pushcarts shall be applied to approved applications. The remaining balance, if any, must be paid after Council approval before the permit will be issued by the Traffic Engineering Department.

A duplicate permit may be issued with the payment of a fee of \$25.00. Contact the Traffic Engineering Department should a permit become lost or destroyed.

A permit can be renewed up to (30) thirty calendar days prior to the expiration date. Any permit applied for after sixteen (16) calendar days of such expiration date shall incur a late fee of \$25.00 in addition to the annual fees stated above. A new application shall be required thirty two (32) calendar days following the expiration date of the existing permit or the permittee shall lose its claim to any particular food zone and/or its place in the rotation cycle of the Premier Area.

9 General Rules and Regulations

- 1) No person or business entity, including religious or charitable organization, shall operate a mobile food vehicle and/or pushcart upon the public rights-of-way within the city without a permit.
- 2) It shall be unlawful for any vehicle to park in an area designated as a food zone without a permit and/or proper authorization.

- 3) The grant of a permit hereunder shall not be deemed to authorize the operation of a mobile food vehicle and/or pushcart without obtaining a business license, as may be required under the current business license code. A permittee must subsequently obtain a business license from the Revenue Division of the Finance Department, or be subject to a fine as defined in Section 12.3 for each day permittee is in violation of this section.
- 4) Persons conducting business from a mobile food vehicle or pushcart on private property:
- a) Must provide to the City a lease or the written expressed consent from the owner to use the business property on which they propose to operate.
 - b) Must have a valid city business license unless otherwise exempted by city ordinance.
 - c) Shall be responsible for properly disposing of such refuse, trash, and litter from the food vending operation as would any business, and shall not place it in any public trash container, or in any private container without proper permission.
 - d) The food vending operation must be a use that is otherwise allowed within the zoning district in which the vendor proposes to operate.
- 5) Persons conducting business from a mobile food vehicle on private property shall not be permitted to operate in the following manner:
- a) Vending may not obstruct the use of any street intersection or pedestrian crosswalk.
 - b) Vending shall not impede the ingress or egress of any driveway.
 - c) Vending shall not obstruct pedestrian space.
 - d) Shall not impede or obstruct the ingress or egress of any building.
 - e) Any power sources must be depicted on the site plan and must meet all applicable electrical code standards.
 - f) Vending structures shall not be left unattended or stored at any time on the open vending site when vending is not taking place or during restricted hours of operation.
 - g) Amplified sound or sound equipment must comply with the City of Birmingham Noise Ordinance.
 - h) Any and all signage must be contained on the private property. At no time shall any signage be placed within the public rights-of-way.

~~4)6)~~ Hours of operation within the public rights-of-way shall be as follows:

City Center Permits	Monday – Friday 6:00 a.m. - 6:00 p.m.
General Permits	Monday - Sunday 6:00 a.m. – 2:00 a.m.

~~5)7)~~ All locations are subject to the regulations and other requirements established by the Health Department. It shall be unlawful for any person to prepare, sell, offer or expose for sale, exchange, give away, deliver, dispose of or have in possession, custody or control, in the city, with intent to sell, offer or expose for sale, exchange, gift or delivery, any meat, prepared food, vegetable, beverage, liquid or other article used or intended for use as food for human beings, without a valid, unsuspended and unrevoked permit issued by the health officer, pursuant to regulations of the state board of public health.

~~6)8)~~ It shall be unlawful to leave any mobile food vehicle and/or pushcart unattended on public rights-of-way, or to remain on public rights-of-way outside of the allowed hours of operation.

~~7)9)~~ Vendors shall be allotted thirty (30) minutes set-up and thirty (30) minutes breakdown before and after the stated operating hours.

~~8)10)~~ No mobile food vehicle and/or pushcart shall operate within one hundred fifty (150) feet of the front door of any restaurant in current operation. Distance shall be measured to the nearest public entrance for any indoor food court.

~~9)11)~~ No mobile food vehicle and/or pushcart vending within the City’s rights-of-way shall operate within five hundred (500) feet of any fair, stadium, carnival, circus, festival, special event, civic event, entertainment district or other like sponsored event that is licensed or authorized by the City, unless they are authorized by the sponsor to be participants in such event.

~~10)12)~~ It shall be unlawful to operate a mobile food vehicle and/or pushcart in or within one hundred fifty (150) feet of any Primary or Secondary School within Birmingham’s city limits. Distance shall be measured to the nearest lot line of the school’s campus.

~~11)13)~~ Any applicant that desires to operate concurrent food zones shall pay the general permit fee for each food zone it creates within the rights-of-way.

~~12)14)~~ Permittee shall be granted a single food zone permit for each vehicle added to the rotation cycle within the Premier Area of the City Center.

- | ~~13)~~15) The permit shall be subject to additional limitations on hours and days of operation that the City determines are appropriate to prevent conflict with special events. Examples of special events include, but are not limited to, construction, parades, sponsored marathons and blocked streets to allow licensed events. The City shall not be required to provide alternate food zones for operation during the actuation of any of the special events.
- | ~~14)~~16) No mobile food vehicle and/or pushcart shall use or maintain any outside sound amplifying equipment, lights, or noisemakers, such as bells, horns or whistles or similar devices to attract customers. A mobile food vehicle and/or pushcart may use battery-operated lights with appropriate protective shields for the purpose of illuminating merchandise, so long as it is not a distraction to passing motorists. The decision of such distractions shall be determined by the BPD.
- | ~~15)~~17) No mobile food vehicle and/or pushcart operating within the city shall cause congestion that impedes pedestrian or vehicle traffic or interfere with the city or public's use of any public rights-of-ways. This shall include but is not limited to activity of customer queues, accessory units, or signage that in any way invades or impairs access to adjacent parking, pedestrian or vehicle traffic.
- | ~~16)~~18) No mobile food vehicle and/or pushcart shall make or solicit any sales to occupants of vehicles or engage in any activities which impede vehicular traffic.
- | ~~17)~~19) Any power required for the mobile food vehicle and/or pushcart located on a public way shall be self-contained. The mobile food vehicle and pushcart shall not draw its power from the public rights-of-way. No power cable or equipment shall be extended at grade or overhead across any public street, alley or sidewalk.
- | ~~18)~~20) Mobile food vehicles and/or pushcarts shall be responsible to provide and maintain their own trash receptacles. Permittee shall contain all refuse, trash, and litter within the mobile food vehicle or a small moveable trash can maintained by the permittee, and located adjacent to the mobile food vehicle and/or pushcart in such a manner as not to block or otherwise obstruct pedestrian or vehicular traffic. The permittee of the mobile food vehicle and/or pushcarts shall be responsible for properly disposing of such refuse, trash, and litter as would any business, and shall not place it in any public trash container, or in any private container without proper permission.
- | ~~19)~~21) The proposed mobile food vehicle and/or pushcart vending activity shall comply with all applicable laws including but not limited to the Americans with Disabilities Act.
- | ~~20)~~22) Mobile food vending in the rights-of-way shall only occur from the side of a food vehicle that is parked abutting and parallel to the curb.

- | ~~21~~23) Pushcarts shall have overhead protection, such as an umbrella, to cover the food area.
- | ~~22~~24) No mobile food vehicle shall have a drive-through service.
- | ~~23~~25) The decibels levels for any generator(s) used shall not exceed “80dBA”. The operator shall provide the manufacturer’s specs on decibels range generated by his particular generator.
- | ~~24~~26) Any mobile food vehicle and/or pushcart being operated without a valid permit issued by the City Council shall be deemed a public safety hazard and may be ticketed and impounded.
- | ~~25~~27) No mobile food vehicle and/or pushcart shall be parked on the street overnight, or left unattended and unsecured at any time. Any mobile food vehicle and/or pushcart which is found to be unattended shall be considered a public safety hazard and may be ticketed and impounded.
- | ~~26~~28) A mobile food vehicle and/or pushcart operating at any unauthorized location or beyond the hours for which the operation has been permitted shall be deemed operating without a permit in violation of this section and may be subject to enforcement.
- | ~~27~~29) Any new business that opens or moves near an existing mobile food vehicle and/or pushcart food zone shall be deemed to have accepted the proximity of the existing mobile food vehicle and/or pushcart in operation.
- | ~~28~~30) The City Council shall, in the best interest of the City, maintain the authority to regulate uses of the public rights-of-way and reduce the size and/or location of a food zone at a later date.

10 Temporary Food Zone Permit

A temporary food zone permit allows mobile food vehicles and pushcarts the opportunity to serve specific events for one calendar day. This permit is allowed only when the timing and place of said activity does not conflict with the City’s desire to protect the safe and convenient use of public rights-of-way. It is the City’s intent to control the pedestrian and street congestion as it relates to the operation of mobile food businesses and the proximity to established brick and mortar businesses. This permit is primarily used to either extend the hours of operation of an existing food zone or to grant permission to operate in locations within the rights-of-way that have not been designated as food zones.

The City shall offer a temporary permit twice a year to mobile food vehicles and pushcarts providing them the opportunity to test two different locations for a period of one month. The operator must apply at a minimum of 30 days in advance for this temporary permit.

The temporary food zone vending permit shall be issued under the following conditions:

- 1) The applicant must first possess a current mobile food vendor or pushcart permit.
- 2) An application must be submitted to the city Traffic Engineering Department a minimum of three (3) working days prior to the event.
- 3) A fee of Twenty-Five Dollars (\$25.00) shall be paid by the person applying for the one day permit at the time of the filing of the application. The permit shall be effective for no more than one day during a calendar year. Each day shall require a separate permit.

4) A fee of Sixty Dollars (\$60.00) shall be paid by the person applying for a one month temporary permit at the time of the filing of the application. The permit shall be issued once in May and again in October by the Traffic Engineer.

~~4)5)~~ The temporary food zone permit shall only be issued for an event abutting a curb space in the rights-of-way. It shall not apply to operation on private property.

~~5)6)~~ The permittee shall obtain and display the temporary food zone permit at the vending site in a manner established by the Traffic Engineering Department.

~~6)7)~~ The temporary food zone permit shall be subject to the Rules and Regulations of the primary permit issued.

~~7)8)~~ The Traffic Engineer Department shall approve or deny the issuance of a temporary food zone permit based on the same criteria used to establish all food zones.

~~8)9)~~ If the proposed temporary food zone will occur within two hundred (200) feet of a park, the Traffic Engineer shall approve or deny the temporary food zone based on the following considerations:

- a) Public safety concerns; or
- b) Access to the entrances and exits of the park; or
- c) Conflicts with existing businesses and concessionaires, permitted events, or other special activities occurring in the park.

Any applicant that wishes to operate in non-designated locations for 2 or more consecutive days shall either apply for a Special Events business license or must submit an application to the Mobile Food Vendors Committee through the Traffic Engineering Department requesting a new food zone to be created.

The City shall provide to the permittee evidence of its authorization for a temporary food zone. It shall be the responsibility of the permittee to secure any temporary zone that has been authorized by the Traffic Engineering Department. The City shall not be held liable for the failure of the permittee to secure the temporary zone once approval is provided.

11 Written Application for Transfer of Permit Required

- 1) Ownership of a permit issued under this ordinance shall not be reassigned by the permittee. The City Council is hereby authorized to transfer any valid permit from one entity to another. No transfer shall be made to an entity that would not have been eligible to receive the permit originally.
- 2) Any permittee desiring a transfer of a permit shall file an application with the Mobile Food Vendors Committee prior to the date ownership of the business is transferred or conferred to another legal entity.
- 3) No permit shall be transferred except with the consent of the City Council.
- 4) Nothing in this section shall prohibit the City from requiring a new application and permit approval.

12 Enforcement

- 1) It shall be unlawful for any person to vend or operate without a duly issued permit or in violation of any of the provisions of this ordinance.
- 2) Enforcement. The provisions of this section or any rules and regulations shall be enforceable by the Birmingham Police Department and the Traffic Engineering Department.
- 3) Fine for Violation. Any mobile food vehicle and/or pushcart in violation of any provision of this ordinance shall be subject to a fine of up to five hundred (\$500.00) dollars per violation. Each violation shall constitute a separate and distinct offense. Each day shall be considered a separate offense.
- 4) Any permit holder found in violation of any section of this ordinance may be issued a ticket for violation and the mobile food vehicle and/or pushcart may be impounded.
- ~~1) Any person vending without a duly issued permit and personal identification or found in violation of any of the regulatory provisions of this chapter shall be guilty of an infraction. Any person found guilty of an infraction, of which person has been given notice, shall not be punished by imprisonment but shall be fined.~~

~~2) *Enforcement.* The provisions of this section or any rules and regulations shall be enforced jointly by the Birmingham Police Department and the Traffic Engineering Department.~~

~~3) *Fine for Violation.* Any mobile food vehicle and/or pushcart in violation of any provision of this ordinance shall be subject to a fine of three hundred (\$300.00) dollars per violation. Each violation shall constitute a separate and distinct offense. Each day shall be considered a separate offense.~~

~~4) Any permit holder found in violation of any section of this ordinance may be issued a ticket for violation and the mobile food vehicle and/or pushcart may be impounded.~~

13 Denial, Revocation, Suspension of Permit

An application or approved permit may be denied, revoked, suspended, or not renewed for any of the following reasons:

- 1) *Revocation, Suspension, Modification.* A permit may be revoked, suspended, modified, or not renewed by the City Council for failure to comply with the provisions of this ordinance, or of any provision of this Code or other ordinance of the city enacted in the exercise of its police power. A permit may also be revoked whenever in the judgment of the City Council when it deems it necessary for the protection of the public good or for the prevention of disorders: provided, however, that the City Council shall first give reasonable notice to the permittee of a public hearing on the matter of such revocation. The permittee shall have the right to counsel as well as the right to present and cross examine witnesses at such hearing.
- 2) The permittee or any of its principals fails to satisfy any qualification or requirement imposed by this ordinance, or other local, state or federal laws or regulations that pertain to the particular license; or
- 3) The permittee or any of its principals is or has engaged in a business, trade or profession without having obtained a valid license, permit or work card when such applicant or principal knew or reasonably should have known that one was required; or
- 4) The permittee or any of its principals has been subject, in any jurisdiction, to disciplinary action of any kind with respect to a license, permit or work card to the extent that such disciplinary action reflects upon the qualification, acceptability or fitness of the applicant or principal to conduct such a business; or
- 5) The permittee or any of its principals has been convicted of any crime that involves any local, state or federal law or regulation arising out of the operation of a similar business; or
- 6) The permittee or any of its principals has been convicted of a crime as a result of having

perpetrated deceptive practices upon the public within the last ten years; or

- 7) The motor food vehicle and/or pushcart on which the business is conducted does not satisfy all local, state or federal laws or regulations which relate to the activity that is to be licensed after a notice and opportunity to cure; or
- 8) The permittee or any of its agents is in default on any payments owed to the city; or
- 9) The application contains material omissions or false, fraudulent, or deceptive statements;
or
- 10) The motor food vehicle and/or pushcart is operated in such a manner as constituting a public nuisance per the Birmingham City Code or state statutes; or
- 11) The proposed operation is in violation of any federal, state, or local laws including, but not limited to, the provisions of this Ordinance pertaining to public health or safety.
- 12) The permittee or his agents or employees interfere with an inspection of the mobile food vehicle and/or pushcart by a Health Department inspector; or
- 13) The permittee or his agents have repeated violated applicable portions of this Article; or
- 14) There are repeated violations of federal or state food laws or laws regulating mobile food vehicles and/or pushcarts; or
- 15) The County Health Department denies, revokes or suspends the license of the mobile food vehicle and/or pushcart; or
- 16) There is a violation of any section of this Ordinance.

The provisions of this section are not exclusive. This section shall not preclude the enforcement of any other provisions of this Ordinance or local, state and federal laws and regulations. A County Health Department may impose additional requirements to protect against health hazards related to the operation of a mobile food vehicle and/or pushcart.

14 Ice Cream Trucks

- 1) All ice cream trucks are required to purchase a business license.
- 2) An ice cream truck shall not be required to apply for a permit; unless and except it wishes to operate within a food zone. Ice cream trucks are subject to the regulations of this ordinance only when operating in a food zone. Ice cream trucks that do not operate in a food zone are exempt from the regulation of this ordinance with the exception of Section 14.3.

- 3) Except as herein provided, it shall be unlawful for any ice cream truck, while engaged in the business of selling, to stop or stand or permit or suffer any vehicle to do so upon any street of the city except during the actual sale of its ice cream product. In no event shall an ice cream truck be or remain upon any street or sidewalk longer than is reasonable to conduct a sale; such time not to exceed 30 minutes.

SECTION 2. EFFECTIVE DATE. This Ordinance shall become effective upon passage, approval and publication or as otherwise provided by law.

SECTION 3. SEVERABILITY. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by declaration of any court of competent jurisdiction, such declaration shall not affect the validity of the remaining portions of this ordinance.

SECTION 4. PRESERVATION. Nothing in this Code or the ordinance adopting this Code shall be construed to repeal or otherwise affect the validity of any of the following: Any offense or act committed or done or any penalty or forfeiture incurred or any contract or right established or accruing before the effective date of this Code.